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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MOISES ZURITA ESTRADA,

Defendant and Appellant.

A106929

(San Mateo County
Super. Ct. No. SC055253)

This is an appeal from a final judgment following a trial and is authorized by Penal Code section 1237.

On December 17, 2003, an information was filed against appellant Moises Zurita Estrada alleging in count III, a violation of Health and Safety Code section 11378 (possession of methamphetamine for sale on November 6, 2003). Count IV alleged a violation of Health and Safety Code section 11379 (transportation of methamphetamine on November 6, 2003). Probation ineligibility allegations were filed on each count pursuant to Penal Code section 1203.073, subdivision (b)(2) (weight allegation).

Jury trial commenced on March 23, 2004, and lasted five days. On March 29, 2004, appellant was found guilty on both counts and the special allegations were found to be true. Following the filing of a probation report, appellant was sentenced on May 10, 2004. Probation was denied, and appellant received a two-year middle term on count III, the violation of Health and Safety Code section 11378. A two-year low term sentence on

count IV, the violation of Health and Safety Code section 11379, was stayed pursuant to Penal Code section 654. On June 21, 2004, appellant filed a notice of appeal.

On July 17, 2003, Officer Anthony Mariucci of the San Mateo County Sheriff's Department was assigned to the narcotics task force and was working with an informant, Oscar Marin. Officer Mariucci received information that Oscar Martinez, appellant's co-defendant, was a source of cocaine sales. The informant purchased a half-ounce of cocaine from Mr. Martinez. A second sale was conducted with the same parties on August 12, 2003. The informant was being paid for his undercover work.

Further contacts were had, and a five-pound purchase of methamphetamine was negotiated. Arrangements were made for the sale to occur at the Costco parking lot in Redwood City on November 6, 2003.

Mr. Martinez was called on November 6, 2003, by the informant and a meeting was held at the Costco parking lot. Mr. Martinez indicated that he was going to go obtain the drugs, and drove away in a Jeep with undercover agents following him. Twenty minutes later Mr. Martinez returned, along with a second vehicle, an Acura. Mr. Martinez got out of his car and met with the informant, and they were joined by a passenger who was in the Acura.

An arrest signal was given and all were arrested. Appellant was the driver of the Acura. A backpack containing one pound of methamphetamine was recovered from the informant's vehicle. Inside the backpack, besides methamphetamine, were indicia belonging to appellant, including a 24-hour nautilus fitness identification card and a Mexico driver's license with appellant's photograph. When Mr. Martinez first left the Costco parking lot, he drove and was followed to an apartment on Dumbarton Avenue in Redwood City.

Oscar Marin was the confidential informant involved in these purchases. He saw Mr. Martinez carry the backpack containing the drugs into Mr. Marin's car.

Agent Saul Lopez of the San Mateo County Narcotics Task Force conducted surveillance on November 6, 2003, at the Costco parking lot. He videotaped the transaction, and testified about the proceedings while the jury viewed the videotape.

Agent Koti Fakava of the San Mateo County Narcotics Task Force was staked out at 50 Dumbarton Avenue in Redwood City on November 6, 2003. He saw Mr. Martinez arrive in a Jeep around 3 p.m. and meet with another person. They drove away together to Second Avenue in Redwood City and went inside an apartment. When they left the apartment on Second Avenue, a third person, identified as appellant, was with them and the three gathered in the driveway. Appellant was seen holding a backpack which he handed to Mr. Martinez.

Agent Brad Buckwalter of the San Mateo County Narcotics Task Force was also conducting surveillance at 50 Dumbarton Avenue on November 6, 2003. He also followed Mr. Martinez to Second Avenue. He saw Mr. Martinez meet with two men and drive away. He saw the other two men, one of whom was appellant, get into an Acura and also leave the scene. He followed both vehicles to the Costco parking lot.

Patricia Von Reuden of the San Mateo County Sheriff's Department forensic laboratory tested the recovered contraband. It weighed 432.40 grams and tested positive as methamphetamine.

Appellant testified as follows: he was visiting his brother-in-law, who lives on Second Avenue on November 6, 2003. He arrived that day from Modesto and was going to stay overnight. He did not bring any methamphetamine with him when he came to Redwood City.

Appellant knew Mr. Martinez as a friend of Hirim Campos. Mr. Campos lives with appellant's brother-in-law, and was the third person involved in the Costco transaction. When appellant arrived at Second Avenue, Mr. Martinez asked him if he could borrow his toiletries. Appellant had his personal items in his backpack, and he simply turned the entire pack over to Mr. Martinez. There was no methamphetamine in the backpack when he gave it to Mr. Martinez. When Mr. Martinez left, Mr. Campos asked appellant for a ride to Costco, and he agreed to take him there.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, counsel requests that this court independently review the entire record on appeal in order to determine, for itself, whether it contains any arguable issues.

We have done so. Appellant was at all times represented by counsel. There was ample evidence to support the jury's verdict. The sentence imposed was lawful. We find no issues requiring further briefing. Judgment is affirmed.

Kay, P.J.

We concur:

Reardon, J.

Rivera, J.